



## I. Legal News Review:

### MOFCOM to relax rules on the Administration of Foreign Investors' Strategic Investment in Listed Companies

On the 30<sup>th</sup> of July 2018, the Ministry of Commerce has issued the "Decision on Revising the Administrative Measures for Strategic Investment by Foreign Investors in Listed Companies", which is a draft for Comment that seeks public opinions until 29<sup>th</sup> August, 2018 (the "Draft").

This Draft deals with China's A-share market and proposes several changes, which include cutting lock-up periods and lowering financial requirement for foreigners.

Strategic investments in A-share listed firms are currently bound by a three years lock-up period. However, according to the Draft, this period would be cut down to twelve months.

The current threshold to be an eligible foreign investor is to own abroad real assets with total amount no less than USD100 million, or to manage real assets with total amount no less than USD 500 million. The Draft lowers the thresholds to respectively USD 50 million and USD300 million. The Draft would apply to "strategic investment" from foreign investors. According to the Draft, such investment could be made via the issuance of new shares, via a transfer through agreement or tender offers.

<http://www.mofcom.gov.cn/article/b/c/201807/20180702771044.shtml>

### The People's Bank of China (PBC) has released a Policy Document to Tighten Administration of Cross-border Financial Network and Information Services

This Circular, entered into force as of 24<sup>th</sup> of July 2018, aims to increase the control on cross-border financial networks and information services.

According to the document published, any overseas financial network and information service providers, who is engaging in cross-border activities with a domestic service receiver (relevant banking financial institutions), shall submit requested information to the PBC at least 30 working days before the beginning of the activity. The PBC must be informed of the details of services provided in China, which includes name of clients and services provided. The overseas institution must also follow all Chinese domestic rules and regulations, such as PRC Cyber Security Law, Administrative Measures for Internet Information Services, and so forth.

<http://www.pbc.gov.cn/zhengwugongkai/127924/128038/128109/3589177/index.html>

## II. Case

### ADIDAS Wins a Trademark Non-Use Revocation Dispute

On the 26<sup>th</sup> of June 2018, the Beijing Higher People's Court pronounced the final judgment on a trademark non-use revocation dispute which ends the long drawn out legal battle filed by the German company Adidas against the Chinese trademark squatters since 2015. In China, non-use revocation filing is a remedy provided by the PRC trademark system against the trademark applications who filed in bad faith. Pursuant to article 49 of PRC Trademark Law, a Chinese trademark registration will be revoked for non-use if a third party files a non-use revocation and the trademark owner is unable to provide evidences of use in commerce during the previous three consecutive years.

The concerned trademark is a clover logo with the name of "□□□sanyecao" registered under class 25 by a Chinese company Shenzhen Silicon Valley ("SSV") with duration of validity from March 14, 2012 to March 13, 2022□which is similar to the famous clover logo held by Adidas. The legal battle against SSV and Tianya (On the 6<sup>th</sup> of December 2016, SSV transferred the ownership of the trademark to another Chinese Company "Tianya") can be summarized as follows:

Litigation		Result	
2015.12.14	Adidas applied for the non-use revocation at Trademark Office	2016.07.21	In favor of SSV
2016.08.18	Adidas applied for a review of the case at the Trademark Review and Adjudication Board	2017.03.20	Partially in favor of Tianya (after the trademark transfer from SSV in end of 2016)
2017.08.11	Adidas raised an administrative law suit at Beijing' s Intellectual Property Rights' Court	2018.03.15	In favor of Adidas
2018.05.11	Tianya made an appeal at Beijing' s Higher People Court	2018.06.26	In favor of Adidas

Undoubtfully, the use of trademark is of great significance to trademark owner, and in this case, both SSV and Tianya have taken a couple of actions to prevent the possibilities of a non-use revocation. The Beijing Higher People's Court make the final decision based on a strict interpretation of such use, that the valid use shall be "public, true and legitimate". For example, the evidences SSV and Tianya submitted to the court include (1) a Trademark Licensing Contract signed between SSV and another Shenzhen Company "Yingshang" (2) Sales Contracts (products including clothing with "sanyecao" mark) between Yingshang and six other companies as well as several Fapiao.

The Beijing Higher People's Court deems that signing a Trademark Licensing Contract does not constitute a valid use. In addition, the Fapiao and Sales Contracts cannot match each other, even worse, some Fapiao cannot be verified. Consequently, a chain of evidences to prove the valid use of trademark cannot be formed, and in the end, Adidas received a favorable judgment from the court. Although the issue of bad faith was not mentioned by the judges, there is a trend to fight against malicious trademark registrations in China.

In light of this case, when a company conducts a trademark search and finds a conflict with an existing mark, one thing the company can consider is whether the mark is vulnerable to revocation (i.e., if it has been registered for at least 3 consecutive years, or if there is any result of use). If suitable, a non-use revocation on such trademark is an option to choose.

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